

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0155-01
Bill No.: SB 172
Subject: Office of Administration; State Attorney General; Kansas City; Law Enforcement
Officers and Agencies; St. Louis; State Employees
Type: Original
Date: February 11, 2011

Bill Summary: This proposal modifies the State Legal Expense Fund.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	Could exceed \$2,000,000	Could exceed \$2,000,000	Could exceed \$2,000,000
Total Estimated Net Effect on General Revenue Fund	Could exceed \$2,000,000	Could exceed \$2,000,000	Could exceed \$2,000,000

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Various Other Funds	Could exceed \$100,000	Could exceed \$100,000	Could exceed \$100,000
State Legal Expense	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	Could exceed \$100,000	Could exceed \$100,000	Could exceed \$100,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	(Up to \$2,000,000)	(Up to \$2,000,000)	(Up to \$2,000,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Attorney General (AGO)** assume that any costs involved in the development of a fee matrix for outside counsel fees would be absorbed with existing resources. AGO assumes that there would be a cost savings to General Revenue through the removal of State Legal Expense Fund (SLEF) coverage of successful claims against St. Louis and Kansas City Boards of Police Commissioners. The amount of such savings is unknown and depends upon the number and amount of judgments and settlements. In addition, the SLEF would presumably experience an unknown amount of savings from the exclusion of coverage for claims that arise out of criminal conduct when there has been a related guilty plea or finding of guilt.

Officials from the **Office of Administration (COA)** declare the state self-assumes its own liability protection under the State Legal Expense Fund (SLEF) in Section 105.711 RSMo. It is a self-funding mechanism whereby funds are made available for the payment of any claim or judgment rendered against the state in regard to the waivers of sovereign immunity or against employees and specified individuals. Investigation, defense, negotiation or settlement of such claims is provided by the Office of the Attorney General. Payment is made by the commissioner of Administration with the approval of the Attorney General.

The SLEF has paid eight claims in the past eight fiscal years totaling nearly six million dollars for claims arising out of incidents where the employee either pled guilty or was convicted of a crime for his or her actions resulting in injury to the claimant. Based on this loss history there is the likelihood for savings to the SLEF.

Since January of 2005, when the Missouri Supreme Court ruled in the Wayman-Smith decision, the SLEF has paid approximately ten million dollars in claims for the St. Louis City Police and the Kansas City Police Boards. Current language in the LEF allows for annual reimbursement up to one million dollars each for the St. Louis Metropolitan Police Department and the Kansas City Police Department (potential total of \$2 million annually).

Officials from the **Department of Transportation (MoDOT)** state first, that moneys in the SLEF will no longer be available for payment of tort claims against officers or employees of the state or any state agency if the claim against that officer or employee arises out of conduct for which the officer or employee has pleaded guilty to or been found guilty of a misdemeanor or felony. This change could have a positive fiscal impact on MoDOT, if any of its employees against whom a tort claim has been made pleads guilty or is found guilty of a crime arising out of conduct that is the basis for the tort claim, but any such impact is unknown and speculative.

ASSUMPTION (continued)

Next, the bill states that if funds from the SLEF are expended prior to the payment of any claim or final judgment to pay costs of defense, including reasonable attorney's fees for retention of legal counsel, the reasonableness of such fees shall be determined based on a matrix developed jointly by the Office of Administration and the Attorney General's Office. When legal counsel is retained due to a determination of conflict with the Attorney General's Office, such fees shall be monitored by legal counsel for the Office of Administration or for a state agency not involved in the conflict.

Officials from the **Office of the State Courts Administrator** assume the proposal would not fiscally impact the courts.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the matrix to be developed by the Attorney General's Office and the Office of Administration may result in a savings to the General Revenue Fund. Oversight also assumes the removal of part of Section 105.726.3, RSMo regarding reimbursement to Boards of Police Commissioners may result in a loss of funding at the local government level.

The appropriation to fund the State Legal Expense Fund in FY 2011 consisted of the following sources:

General Revenue Fund	\$6,000,000E
State Highways and Transportation Department Fund	\$ 600,000E
Conservation Commission Fund	\$ 130,000E
Office of Administration Revolving Administrative Trust Fund	\$ 25,000E
Parks Sales Tax Fund	\$ 2,286E
Soil and Water Sales Tax Fund	\$ 149E
TOTAL	\$6,757,435E

ASSUMPTION (continued)

Oversight assumes the net savings to the state will occur in the funds listed above that provide funding to the State Legal Expense Fund. For purposes of the fiscal note, Oversight will group all of the funds above, except the General Revenue Fund, as “Other State Funds”. Oversight assumes the net fiscal impact to the State Legal Expense Fund will net to zero (potential savings from the changes in the bill offset by reduced transfers in from other state funds). Disbursements from the SLEF (fund 0692) for FY 2010, totaled \$9,994,181.

Officials from **Kansas City** and **St. Louis** did not respond to our request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE			
<u>Savings</u> - potentially less money needed to fund the State Legal Expense Fund because of various changes to Section 105.711, RSMo	Could exceed <u>\$2,000,000</u>	Could exceed <u>\$2,000,000</u>	Could exceed <u>\$2,000,000</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	Could exceed <u>\$2,000,000</u>	Could exceed <u>\$2,000,000</u>	Could exceed <u>\$2,000,000</u>
OTHER STATE FUNDS			
<u>Savings</u> - potentially less money needed to fund the State Legal Expense Fund because of various changes to Section 105.711, RSMo	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>	Could exceed <u>\$100,000</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
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STATE LEGAL EXPENSE FUND

Savings - Office of Administration

Changes to Section 105.711.2(2) regarding exemption of claims arising out of conduct of an employee or officer who pleads guilty or who has been found guilty of a misdemeanor or felony	Unknown - potentially more than \$100,000	Unknown - potentially more than \$100,000	Unknown - potentially more than \$100,000
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Savings - Office of Administration

Changes to Section 105.716.4 - regarding the retention of legal counsel and the reasonableness of outside attorney's fees based upon a matrix	\$0 or Unknown	\$0 or Unknown	\$0 or Unknown
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Savings - Office of Administration

Changes to Section 105.726.3 - regarding the deletion of the requirement of the COA to reimburse the board of police commissioners from St. Louis and/or Kansas City for liability claims paid up to a maximum of \$1 million per year each.	Up to \$2,000,000	Up to \$2,000,000	Up to \$2,000,000
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<u>Loss</u> - potential reduced transfers in from the General Revenue Fund	(Could exceed \$2,000,000)	(Could exceed \$2,000,000)	(Could exceed \$2,000,000)
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<u>Loss</u> - potential reduced transfers in various other state funds	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)	(Could exceed <u>\$100,000</u>)
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ESTIMATED NET EFFECT TO THE STATE LEGAL EXPENSE FUND

<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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**BOARD OF POLICE
 COMMISSIONERS**

Loss - Board of Police Commissioners

Changes to Section 105.726.3 - regarding the deletion of the requirement of the COA to reimburse the board of police commissioners from St. Louis and/or Kansas City for liability claims paid up to a maximum of \$1 million per year each.	(Up to <u>\$2,000,000</u>)	(Up to <u>\$2,000,000</u>)	(Up to <u>\$2,000,000</u>)
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ESTIMATED NET EFFECT TO LOCAL BOARD OF POLICE COMMISSIONERS	(Up to <u>\$2,000,000</u>)	(Up to <u>\$2,000,000</u>)	(Up to <u>\$2,000,000</u>)
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies the State Legal Expense Fund. It prohibits the State Legal Expense Fund from paying claims against state officers or employees that arise out of criminal conduct for which the officer or employee has already plead guilty or been found guilty.

The act requires the Office of Administration and the Attorney General's office to jointly develop a fee matrix to be used to when the Attorney General's office hires outside legal counsel. When outside legal counsel is hired because the Attorney General determines there is a conflict with his office, the legal fees shall be monitored by legal counsel for the Office of Administration or a state agency not involved in the conflict.

The State Legal Expense Fund will no longer reimburse the St. Louis and Kansas City Boards of

Police Commissioners for up to a maximum of one million dollars per fiscal year.

FISCAL DESCRIPTION (continued)

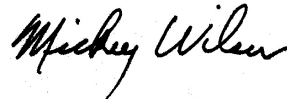
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of the State Courts Administrator
Office of Administration
Office of the Secretary of State
Department of Transportation

NOT RESPONDING:

City of Kansas City
City of St. Louis



Mickey Wilson, CPA
Director
February 11, 2011